

Matt

Miller

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Introduced by: Councilman Tansey *it*

Date: December 7, 2004

**SUBSTITUTE ORDINANCE NO. 1 TO
ORDINANCE NO. 04-171**

**TO REVISE CHAPTER 38 OF THE NEW CASTLE COUNTY CODE ("UTILITIES")
REGARDING ARTICLE 2 ("SEWERS AND SEWAGE DISPOSAL") AND ARTICLE 3
("PROHIBITIONS, ENFORCEMENT, AND PENALTIES")**

WHEREAS, the U.S. Environmental Protection Agency ("EPA") requires New Castle County ("County") to adopt local limits for the Middletown-Odessa-Townsend Wastewater Treatment Plant ("MOT Plant") Service Area and the City of Wilmington's Wastewater Treatment Plant ("Wilmington Plant") Service Area; and

WHEREAS, new local limits have been developed for the MOT Plant and Wilmington Plant, and the County must adopt these new local limits as set forth herein; and

WHEREAS, the EPA also reviewed Chapter 38, Article 2, Division 38.02.700 and Chapter 38, Article 3 of the *New Castle County Code* ("Code") and has recommended and/or required the following revisions; and

WHEREAS, the Delaware Department of Natural Resources and Environmental Control ("DNREC") issued a Notice of Conciliation and Secretary's Order No. 2003-0053 ("Secretary's Order"), which required the County to take certain measures to minimize sanitary sewer overflows; and

WHEREAS, as a part of the Secretary's Order, the County is required to update its program to regulate the introduction of fats, oil and grease ("FOG") into the County sewer system, and the provisions contained herein implement the updated FOG program; and

WHEREAS, the following revisions to the *Code* are proposed to bring the County into compliance with the EPA's and DNREC's directives; and

WHEREAS, County Council has determined that the provisions of this ordinance substantially advance, and are reasonably and rationally related to, the legitimate government interest of promoting the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of this County and State.

NOW, THEREFORE, THE COUNTY OF NEW CASTLE HEREBY ORDAINS:

Section 1. Chapter 38, Section 38.02.701 of the *New Castle County Code* is hereby amended by the addition of the underlined text and the deletion of the bracketed text as set forth below:

Sec. 38.02.701. Definitions.

The following words, terms and phrases, when used in this Division, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

Act means the Federal Water Pollution Control Act, also known as the Clean Water Act, 33 U.S.C. §1251 et seq. as amended.

Authorized representative shall be defined as under Code of Federal Regulations (CFR), 40 CFR 403.12 [(k)(1)(1)-(3))(1).

...

Best Management Practices ("BMP") Manual means the BMP requirements and recommended practices maintained by the Department of Special Services and issued to all commercial food establishments.

...

Commercial food establishment ("CFE") means any facility that prepares, packages, serves and/or provides foods or beverages for sale or consumption on or off site, including but not limited to restaurants, food courts, food manufacturers, food packagers, grocery stores, hospitals, hotels, nursing homes, churches, schools, and correctional facilities.

Composite sample means a sample [obtained over a minimum of a six (6) hour period from a continuous sampling device compositing a sample in proportion to flow or a series of grab samples obtained either manually or with a sampler once each hour and subsequently composited proportionally to the measured flow at the time of each sampling] composed of no less than eight grab samples taken over the compositing period.

...

Contributory Industrial User means any industrial user that discharges specific pollutants to the publicly owned treatment works at concentrations greater than typical domestic/commercial wastewaters as calculated in the most recent EPA approved local limit evaluation.

...

Enforcement Response Plan ("ERP") means the guidelines created and periodically amended by the Department of Special Services, which establishes enforcement procedures for violations of Division 38.02.700 of this Chapter.

...

Fats, oil, and grease ("FOG") means a material, either liquid or solid, composed primarily of fats, oil and grease from animal or vegetable sources.

...

General Manager means the General Manager of the Department of Special Services or his or her representative.

...

Industrial user (IU) means any establishment which [uses water in a product or generates a wastewater during any period of production.] discharges pollutants into the publicly owned treatment works from any non-domestic source regulated under section 307(b), (c), or (d) of the Clean Water Act.

...

[Manager means the General Manager of the Department of Special Services or his or her representative.]

...

Maximum Allowable Industrial Loading means the maximum mass of pollutants that is allowed to be discharged to the publicly owned treatment works from all contributory industrial users.

...

NPDES means National Pollutant Discharge Elimination System as defined in 40 CFR, Chapter [1] I, Part 122.

...

New source means any building, structure, facility or installation from which there is (or may be) a discharge of pollutants, the construction of which is commenced after the publication of proposed national pretreatment standards under Section [306] 307(c) of the federal Clean Water Act which will be applicable to such source if such standards are thereafter promulgated in accordance with Section [306] 307(c) of the Act.

...

Significant noncompliance means any one (1) of the following:

A. . . .

B. . . .

C. Any other violation of a pretreatment effluent limit that the [control authority] County determines has caused, alone or in combination with other discharges, interference or pass through.

...

H. Any other violation or group of violations which the [control authority] County determines will adversely affect the operation or implementation of the local pretreatment program.

...

Total Suspended Solids (TSS) [(filterable residue)] means the dry weight of solids, expressed as milligrams per liter, that either float on the surface of, are in suspension in or are settleable in water, wastewater or other liquids, and which are largely removable by a laboratory filtration device.

...

Section 2. Chapter 38, Section 38.02.702 of the *New Castle County Code* is hereby amended by the addition of the underlined text and the deletion of the bracketed text as set forth below:

Sec. 38.02.702. Prohibited discharges.

It shall be unlawful for any person to discharge or permit the discharge or infiltration into any public sewer any of the following:

- A. Any liquid or vapor having a temperature higher than one hundred fifty (150) degrees Fahrenheit [or] , any substance which causes the temperature of the total wastewater treatment plant influent to exceed one hundred four (104) degrees Fahrenheit or any substance which inhibits biological activity in the POTW.
- B. Any liquid containing fats, wax, grease, non-biodegradable cutting oil or oils of mineral, animal, vegetable or petroleum origin, whether emulsified or not, in excess of one hundred (100) mg/l or in any amounts that will cause interference or pass through. Lower limits may be applied where necessary to prevent [interference with POTW operations or pass through] specific problems.
- C. . . .
- D. . . .
- E. Any pollutants which result in the presence of toxic gases, vapors or fumes within the collection and treatment system in a [facility] quantity that may cause acute worker health and safety problems.

F. Any trucked or hauled pollutants except at discharge points designated by the General Manager.

G. . . .

1. . . .

2. . . .

3. . . .

4. [Pass] Cause pass through to the receiving waters without being effectively treated by normal wastewater treatment processes due to the incompatibility of the substance and cause violation of State or Federal regulations or NPDES Permit.

H. Any discharge into public sewers of solid or viscous substances which may cause obstruction to the flow in the public sewer system, including but not limited to the following:

1. . . .

25. . . .

I. . . .

J. . . .

K. . . .

Section 3. Chapter 38, Section 38.02.703 of the *New Castle County Code* is hereby amended by the addition of the underlined text and the deletion of the bracketed text as set forth below:

Sec. 38.02.703. Maximum constituents.

A. *Limitations of concentrations.* The thirty day average concentration in wastewater of any of the following constituents shall be limited to the following (see also Section 38.02.704):

Constituent	Industrial Point Source	
	In Middletown-Odessa-Townsend Service Area (30-Day Average, mg/l)	In Wilmington Service Area Contributory Industrial User (30-Day Average, mg/l)
[Aluminum]	[1.50]	[--]
Arsenic	1.00	[0.24] <u>0.09</u> ✓
[Beryllium]	[0.007]	[--]

Cadmium	0.015	[2.00] 0.07
Chromium, Total	1.50	4.00
Chromium, VI	0.50	--
Copper	[0.15] 1.0	[3.00] 0.91
Lead	[0.50] 3.00	[9.00] 1.94
Mercury	0.001	[0.045] 0.0057
Nickel	[0.020] 1.00	1.00
Selenium	[0.25] --	[--] 0.65
Silver	0.015	--
[Thallium]	[5.0]	[--]
Zinc	1.00	[14.00] 3.49
Ammonia as Nitrogen	35.00	35.00
TKN	15	--
Phosphorus	45	--
Cyanide, Total	[0.30] --	0.49
PCB	[0.0001] Non-Detectable	--
Phenolics	10.00	10.00
BOD	350	[350] 500
Total Suspended solids (TSS)	500	500

B. *Additional limitations; acceptance of excess concentrations; special agreements.* Notwithstanding the limitations set forth in subsection A of this Section, the General Manager may impose additional limitations on mass loading of BOD and other constituents. However, the General Manager may accept the discharge in wastewater of constituents in excess of such concentrations, provided that the General Manager determines that such increased concentrations are compatible with the wastewater treatment process. In no case shall a special agreement allow the total loading allocated to all regulated industrial users to exceed the Maximum Allowable Industrial Loading calculated during the most recent local limits evaluation. All approvals shall be granted in writing. Nothing in this Division shall be construed as preventing any special agreement or arrangement between the General Manager and any person whereby an industrial waste of unusual strength or character may be accepted by the General Manager for treatment, subject to the requirements of [n]National [p]Pretreatment [s]Standards. For such waste, the General Manager may require the user to provide any additional documentation or to conduct any special studies, at the user's expense, as deemed necessary to demonstrate that such waste complies with the

limitations specified under Section 38.02.702 and this Section. Such waivers shall not be applicable to [n]National [p]Pretreatment [s]Standards. Also, in no case will a special agreement waive compliance with a pretreatment standard or requirement, without prior written approval from EPA.

C. *Surcharge fee.* The discharge of constituents in excess of the concentration limits set forth in subsection A of this Section or not specifically limited therein may be subject to the payment of a surcharge fee, as determined from time to time by the General Manager, which surcharge shall be based upon the additional unit cost incurred in the wastewater monitoring, collection, transmission and treatment process attributed to such discharges.

D. *Responsibility to meet standards.* The categorical pretreatment standards found at 40 CFR Chapter I, Subchapter N, Parts 405--471 are hereby incorporated. Any industrial discharger required under federal law to meet [n]National [c]Categorical [p]Pretreatment [s]Standards for any pollutants shall meet these standards in its discharge, provided that such categorical standards are more stringent than the local standards established under subsection A of this Section for the pollutant. Where categorical standards are less stringent than the local standards, the local standards shall apply. The General Manager may revise the discharge limits for specific pollutants covered in the discharger's categorical pretreatment standards, provided that such revision has been approved by the appropriate State and/or federal authority pursuant to 40 CFR 403.7 of the Clean Water Act. Where the limits in a categorical pretreatment standard are expressed only in terms of mass of pollutants per unit of production, the General Manager may establish equivalent mass-per-day or concentration limitations as provided in 40 CFR 403.6. When wastewater subject to a categorical pretreatment standard is mixed with wastewater not regulated by the same standard, the General Manager shall impose an alternate limit using the combined wastewater formula set forth in 40 CFR 403.6(e).

E. *Discharge of radioactive materials.* No user shall discharge radioactive materials into public sewers without a discharge permit. The General Manager may establish, in compliance with applicable State and federal regulations, regulations for the discharge of radioactive wastes into public sewers. In no instance shall the active elements or their local concentrations permitted to be discharged into the sewers exceed the concentration limits established.

F. *Dilution prohibited.* Dilution is prohibited as a substitute for treatment. Except as provided under federal law, the use of dilution as a partial or complete substitute for adequate treatment to achieve compliance with categorical or local limitations is prohibited. The General Manager may impose mass-based limitations or otherwise modify the limitations to account for dilution in each case.

G. General requirements.

1. All industrial users shall:

- a. In accordance with 40 CFR § 403.12, maintain records of flow and discharge characteristics, as well as any industry specific information that may be relevant to determining the

facility's status for pretreatment permitting requirements (whether or not such monitoring activities are required by this Section) for a minimum of three years. This period of retention shall be extended during the course of any unresolved litigation involving the user or when requested by the General Manager. The County shall have the right to inspect, review and copy all records pertaining to discharge at the facility, and the user shall make such records available to the County for inspection, copying, and review.

- b. Notify the County of any substantial change in volume or character of pollutants in the discharge.

2. All users to which the National Pretreatment Standards apply shall submit BMRs in accordance with 40 CFR § 403.12.

Section 4. Chapter 38, Section 38.02.704 of the *New Castle County Code* is hereby amended by the addition of the underlined text and the deletion of the bracketed text as set forth below:

Sec. 38.02.704. Wastewater discharge permits.

A. *Required.*

1. All [nondomestic] industrial users proposing [to connect or] to discharge into a public sewer, shall [obtain] submit an application for a wastewater discharge permit, and if required, obtain a wastewater discharge permit prior to [before] connecting to or discharging into a public sewer. [All existing nondomestic users connected to or discharging wastewater into a public sewer must apply for a wastewater discharge permit within ninety (90) days of commencing discharge.] In determining whether a facility requires a permit, the General Manager shall consider the following factors: flow quantity, constituents, categorical status, and any other factor that indicates a facility's potential to adversely impact the sewer system or the treatment plant's operation. [All industrial users to which the National Pretreatment Standards apply shall submit BMRs in accordance with 40 CFR 403.12.]

2. All significant industrial users are required to obtain a wastewater discharge permit in accordance with this Section. In compliance with 40 CFR 403.12, all significant industrial users, at a frequency determined by the General Manager but in no case less than twice per year, shall conduct sampling and shall submit a report indicating the nature and concentration of pollutants in the discharge which are limited by pre-treatment standards and the measured or estimated average and maximum daily flows for the reporting period.

B. *Permit application.* Users seeking a wastewater discharge permit shall complete and file with the General Manager an application in the form prescribed by the General Manager

and accompanied by any applicable fees. The applicant shall be required to submit, where applicable, in units and terms appropriate for evaluation, the following information:

1. ...

...

14. Results of sampling and analysis identifying the nature and concentration, and/or mass (where required by the standard or by the General Manager) of pollutants in the discharge from each regulated process; instantaneous and daily maximum and long-term average concentrations, or mass (where required) and any other information, such as written proof of zoning approval, as may be deemed necessary by the General Manager in order to evaluate the permit application.

C. *Draft permit.* The General Manager will evaluate the data furnished by the user and may require additional information. After evaluation and acceptance of the data furnished, the General Manager may issue within forty-five (45) days a draft wastewater discharge permit. A forty-five (45) day comment period shall be allowed all users, and thereafter the General Manager may issue a wastewater discharge permit subject to the terms and conditions in this Section.

D. *Permit conditions.* Wastewater discharge permits shall be expressly subject to all sections of this Division and all other regulations, user charges and fees established by the County. The conditions of wastewater discharge permits shall be uniformly enforced by the General Manager. The General Manager may deny or condition new or increased contributions of pollutants or changes in the nature of pollutants to the POTW by industrial users where such contributions do not meet applicable pretreatment standards and requirements or where such contributions would cause the POTW to violate its NPDES permit. Wastewater discharge permits shall [may] contain the following:

1. [The unit charge or schedule of user charges and fees for the wastewater to be discharged to a public sewer.] A statement of duration including issuance date and expiration date.

...

11. A statement of nontransferability of the permit.

12. Other conditions as deemed appropriate by the General Manager to ensure compliance.

E. *Reporting requirements.*

1. ...

...

3. *Filing of periodic discharge/compliance progress reports.* The discharge report may include, but not be limited to wastewater volume rates of flow, constituent

concentrations and mass emission rates, hours of operation, number of employees, or other information which relates to the wastewater discharge to the sewers. Within ninety (90) days following the date for final compliance with applicable categorical pretreatment standards or, in the case of a new source, following commencement of the introduction of wastewater into the POTW, any user subject to such pretreatment standards and requirements shall submit to the General Manager a report containing the information described in subsection B. For users subject to equivalent mass or concentration limits established in accordance with the procedures in 40 CFR 403.6(c), periodic reports on continued compliance shall contain a reasonable measure of the user's long-term production rate. For all other users subject to categorical pretreatment standards expressed in terms of allowable pollutant discharge per unit of production, the report shall include the actual average production rate for the appropriate sampling period. The IU shall sign and certify all compliance reports in accordance with subsection (B)(9); and, not later than fourteen (14) days following each date in the schedule and the final date for compliance, the IU shall submit its progress reports on the compliance schedules [stated] in accordance with subsections (B)(10), (D)(9), and this subsection.

4. ...

F. *Duration of permit.* All wastewater permits shall contain a statement of duration. Permits shall be issued for a specified time period, not to exceed five (5) years. A permit shall be issued for a period of not less than a year or may be stated to expire on a specific date. The terms and conditions of the permit may be subject to modifications and change by the General Manager during the life of the permit as limitations or requirements are modified and changed. The user shall be informed of any proposed changes in the permit at least ninety (90) days prior to the effective date of change. Every user shall be allowed a comment period relating to any of the proposed changes in his or her permit and which shall be the first forty-five (45) days of the ninety (90) day period prior to the effective date of change. Any changes or new conditions in the permit shall include a reasonable time schedule for compliance.

G. *Transfer of permit.* All wastewater discharge permits shall contain a statement of nontransferability. Wastewater discharge permits shall be issued to a specific user for a specific operation. ...

H. *Variances.* Where the General Manager finds that the strict compliance with this Section is not justified, the General Manager may approve a variance to specific subsections of this Section, provided that the variance shall not have the effect of nullifying the intent and purpose of this Section. No variance shall be given to N[n]ational C[c]ategorical P[p]retreatment S[s]tandards, including but not limited to N[n]ational P[p]rohibitive D[d]ischarge S[s]tandards and pretreatment requirements found in the general pretreatment regulations 40 CFR 403 [and State pretreatment standards and requirements]. For the purpose of permit fees, a permit variance shall take into account one (1) or multiple variances within the same permit. All approved variances shall be in writing.

1. . . .

Section 5. Chapter 38, Section 38.02.705 of the *New Castle County Code* is hereby amended by the addition of the underlined text and the deletion of the bracketed text as set forth below:

Sec. 38.02.705. Pretreatment.

A. Under this Division, grease, oil and sand removal equipment or any other treatment equipment shall be provided when, in the opinion of the General Manager, they are necessary for the proper handling of liquid wastes containing grease in excessive amounts or any flammable wastes, sand and other harmful ingredients. All equipment shall be of a type and capacity approved by the General Manager and shall be located so as to be readily and easily accessible for cleaning and inspection.

B. Where [preliminary facilities are] treatment equipment is required for any waters or wastes, they shall be maintained continuously in satisfactory and effective operation by the owner at his or her expense. To aid the General Manager, the owner, subsequent to the commencement of operation of any pretreatment facilities, shall make periodic reports to the General Manager setting forth data upon which he or she may determine the effectiveness and adequacy of such facility in reducing the concentrations of constituents to acceptable limits. Any approval by the General Manager of type, kind or capacity of a facility shall not relieve the owner of the responsibility of revamping, enlarging or otherwise modifying a facility to accomplish its intended purpose to the degree necessary to comply with the rules and regulations or of the requirements of a discharge permit.

C. The General Manager shall evaluate whether [each significant] any industrial user [(SIU)] needs an accidental discharge/slug control plan. The General Manager may require any [SIU] industrial user to develop, submit for approval, and implement such a plan. An accidental discharge/slug control plan shall address, at a minimum, the description of discharge practices, including nonroutine batch discharges; description of stored chemicals; procedures for immediately notifying the General Manager of any accidental or slug discharge, as required by subsection 38.02.706F; and procedures to prevent adverse impact from any accidental or slug discharge. Such procedures include, but are not limited to, inspection and maintenance of storage areas; handling and transfer of materials; loading and unloading operations; control of plant site runoff; worker training; building of containment structures or equipment; measures for containing toxic organic pollutants, including solvents; and/or measures and equipment for emergency response.

Section 6. Chapter 38, Section 38.02.706 of the *New Castle County Code* is hereby amended by the addition of the underlined text and the deletion of the bracketed text as set forth below:

Sec. 38.02.706. Compliance monitoring.

At all times and at his or her discretion, the General Manager shall have the power to take samples or require sampling of any user's discharge to the public sewers in accordance with the following:

A. *Inspections.* The General Manager and other duly authorized employees of the County, bearing proper credentials and identification, shall be permitted to enter all premises at a reasonable hour for the purpose of inspection, observation, measurement, sampling and testing in accordance with this Division. The user shall not be held liable for any unsafe acts performed by the General Manager or his or her representative while on the user's premises, and any loss to the user as a direct result of any unsafe acts performed by the General Manager or his or her representative while on the user's premises shall be the responsibility of the General Manager. [The General Manager or his or her representative shall have no authority to inquire into any manufacturing process beyond that point having a direct bearing on the kind and source of discharge to the sewers or waterways or facilities for waste treatment.]

B. *Sampling points.* Samples shall be taken and flow measurements made, whenever possible, at a common manhole into which all flows from such premises are combined. Such manhole shall be constructed by the owner of such premises, at his or her own expense, when directed by order of the General Manager. Whenever the installation of a common manhole is impossible or impractical, the owner of such premises shall construct and maintain at his or her own expense, in lieu of the common manhole, two (2) or more manholes as required by order of the General Manager for accurate measurement of all flows discharged from such premises into the sewer system; if no special manhole has been required, the control sample shall be taken at a point to be mutually selected by representatives of the General Manager and the user.

C. . . .

D. *Determination of constituent concentration.* The constituent concentrations of any wastewater shall [usually] be determined from representative samples of normal discharges to the public sewers. The samples may be taken [by representatives of the Manager] at sampling stations as described under subsection B of this Section, at any period or time, or of such duration and in such a manner as determined by the General Manager. The intent of any sampling procedure is to establish the constituent concentrations in the wastewater discharged during an average or typical working day. These concentrations may be derived, according to the best judgment of the General Manager, by combining repeated subsamplings during one (1) day or by combination of a series of such days. The analysis of samples taken shall be performed by a laboratory mutually approved by the General Manager and the user. The acceptability of the wastes shall be determined from such analysis.

E. *Disputed constituent concentration.* If the constituent concentration of the wastes discharged from an industrial user to the POTW as determined under this Section is disputed by the IU, the following procedure [may] shall be instituted:

1. . . .

2. The General Manager shall evaluate the request based on the information provided in the request and approve or deny such. If approval is granted, the General Manager shall determine if resampling is warranted.

3. The results of the resampling and analysis shall not replace that of the disputed analysis in determining non-compliance unless the original results are determined to be invalid. The results of the resampling and analysis shall be submitted to the General Manager for consideration of questions on mistakes and/or factors in billing or enforcement pursuant to this Division.

F. *Noncompliance Notification.* . . . The industrial user shall also repeat the sampling and analysis and submit the results to the General Manager within thirty (30) days of becoming aware of the violation.

Section 7. Chapter 38, Section 38.02.708 of the *New Castle County Code* is hereby amended by the addition of the underlined text and the deletion of the bracketed text as set forth below:

Sec. 38.02.708. Accidental discharges and spill notification.

A. *Notification of discharge.* All [U]users shall notify the General Manager within twenty-four (24) hours by telephone upon accidentally discharging wastes in violation of this Division, upon discharging wastes which exceed the prohibitions in 40 CFR Section 403 (5)(b) or upon discharging wastes which could potentially harm the POTW to enable countermeasures to be taken to minimize damage to the public sewer, treatment facility, treatment processes and the receiving waters. Such notification shall be followed, within five (5) working days of the date of occurrence, by a detailed written statement to the General Manager describing the causes of the accidental discharge and the measures being taken to prevent future occurrence.

B. *Notices to employees.* In order that employees of users be informed of these requirements, users shall make available to their employees copies of this Division and other wastewater notices which may be furnished by the General Manager relating to more effective water pollution control. . . .

C. . . .

Section 8. Chapter 38, Section 38.02.709 of the *New Castle County Code* is hereby amended by the addition of the underlined text and the deletion of the bracketed text as set forth below:

Sec. 38.02.709. Public notification.

The General Manager shall annually publish in the newspapers a list of the industrial users which were in significant noncompliance with any pretreatment requirements or standards during the [twelve (12) previous months]: previous calendar year. The notification shall also summarize any enforcement actions taken against the users during the same twelve (12) months.

Section 9. Chapter 38, Section 38.02.710 of the *New Castle County Code* is hereby amended by the addition of the underlined text and the deletion of the bracketed text as set forth below:

Sec. 38.02.710. Confidentiality.

Information and data on an industrial user from reports, questionnaires, permit applications, permits and monitoring programs and from inspections shall be available to the public or other governmental agency without restriction unless the user specifically requests and is able to demonstrate to the satisfaction of the General Manager that the release would divulge information, processes or methods of production entitled to protection as trade secrets of the user. Wastewater constituents and characteristics will not be recognized as confidential information. The County shall make all records and files pertaining to permitted facilities available to the U.S. Environmental Protection Agency and Delaware Department of Natural Resources and Environmental Control, unless otherwise prohibited by law.

Section 10. Chapter 38, Section 38.02.711 of the *New Castle County Code* is hereby created by the addition of the underlined text as set forth below:

Section 38.02.711. Regulation of fats, oil and grease produced by commercial food establishments.

A. General requirements for commercial food establishments.

1. General Standards. Each CFE is subject to and must comply with the standards and procedures set out in this Division and Article 3 of this Chapter, with the exception of Section 38.02.704, Section 38.02.709, and Section 38.02.710. A violation of this Section or any other applicable sections of this Chapter shall be subject to the enforcement provisions in Article 3 of this Chapter and the ERP.
2. Maintenance of Traps and Interceptors. Each CFE shall clean its grease trap and/or interceptor at the minimum frequency specified in the BMP Manual, unless required more frequently by the Department of Special Services or unless required to maintain the efficient operation of the unit. All exterior-located grease traps and interceptors shall be serviced by a grease hauler licensed by the State of Delaware to transport such waste.
3. Recordkeeping. Each CFE shall maintain a grease trap and/or interceptor maintenance log on a standardized form specified by the Department of Special Services and shall make such log available for inspection by the County upon request. All service receipts, logs and maintenance records shall be kept on file for a minimum of two years and made available for the County's inspection upon request. The service receipt, at a

minimum, shall contain the name and address of the facility serviced, the volume of the waste removed, the date and time of service and the name and address of the waste hauler providing the service.

4. Posting of Signs. Each CFE must prominently display the date of the last cleaning of the grease trap and/or interceptor. In addition, every CFE must post at least one sign near the sink or other drainage area, reminding employees not to place fats, oil or grease down a drain.

B. Administrative fee.

1. Beginning September 1, 2005, each CFE will be required to pay an annual administrative fee of one hundred dollars (\$100.00) to cover the costs of administering this program. Payment is due on September 1 of each year, and a 5% late penalty will be applied each month, starting October 1 of each year. Continued failure to pay will result in enforcement action under Article 3 of this Chapter or the ERP.
2. A CFE may apply for an exemption from the administrative fee. The General Manager will exempt the CFE if it meets one of two criteria:
 - a. The CFE is a nonprofit organization as defined by 26 USC § 501(c); or
 - b. The CFE is already subject to a Wastewater Discharge Permit under Section 38.02.704.

To prove compliance with one of these criteria, a CFE must provide supporting documentation, such as affidavits, financial documents, tax documents and any other materials that support its exemption.

- C. Exemption. A CFE may apply for an exemption from its administrative fee and the requirements listed in subsection (A)(1)-(4), if the CFE does not prepare, package, serve or produce any food products that contain or produce grease. The CFE must supply supporting documentation such as affidavits, menus, and any other document that supports its exemption. The County may conduct an inspection of the facilities prior to approval of the application. The County also may conduct periodic inspections after the application has been approved to ensure compliance with the requirements of the exemption.

Section 11. Chapter 38, Section 38.03.003 of the *New Castle County Code* is hereby amended by the addition of the underlined text and the deletion of the bracketed text as set forth below:

Sec. 38.03.003. Penalties.

A. . . .

1. . . .

B. *Administrative fines.* Notwithstanding any other section of this Chapter, any person, not including industrial users, who is found to have violated any section of this Chapter or permit or order issued under this Chapter [shall] may be fined in an amount not to exceed one thousand dollars (\$1,000.00) per violation, and not to exceed a total of five thousand dollars (\$5,000.00), in addition to actual damages to the POTW. Any industrial user who is found to have violated any section of this Chapter or permit or order issued under this Chapter [shall] may be fined in an amount not to exceed five thousand dollars (\$5,000.00) per violation, in addition to actual damages to the POTW, or imprisonment for not more than one (1) year or both. The Manager may recover reasonable attorney's fees, court costs, and other expenses associated with the enforcement activities, including sampling and monitoring expenses. Such assessments may be added to the user's next scheduled sewer service charge or the assessment may be collected according to any other remedies available to the Manager. Unpaid charges, fines and penalties shall constitute a lien against the individual user's property.

C. . . .

D. . . .

Section 12. Inconsistent Ordinances and Resolutions Repealed. All ordinances or parts of ordinances and all resolutions or parts of resolutions that may be in conflict herewith are hereby repealed except to the extent they remain applicable to land use matters reviewed under previous Code provisions as provided in Chapter 40 of the *New Castle County Code*.

Section 13. Severability. The provisions of this ordinance shall be severable. If any provision of this ordinance is found by any court of competent jurisdiction to be unconstitutional or void, the remaining provisions of this ordinance shall remain valid, unless the court finds that the valid provisions of this ordinance are so essentially and inseparably connected with, and so dependent upon, the unconstitutional or void provision that it cannot be presumed that County Council would have enacted the remaining valid provisions without the unconstitutional or void one; or unless the court finds that the remaining valid provisions, standing alone, are incomplete and incapable of being executed in accordance with County Council's intent. If any provision of this ordinance or any zoning map or portion thereof is found to be unconstitutional or void all applicable former ordinances, resolutions, zoning maps or portions thereof shall become applicable and shall be considered as continuations thereof and not as new enactments regardless if severability is possible.

Section 14. Effective Date. This ordinance, except the provisions enacting the local limits for the Wilmington Plant and the MOT Plant, shall become effective following passage by New Castle County Council and approval by the County Executive. The local limits for the Wilmington Plant and MOT Plant shall not become effective until the County receives the EPA's final approval of the local limits for both of those facilities. EPA's final approval shall occur after the conclusion of EPA's formal notice and comment procedure, which shall be initiated following passage by County Council and approval by the County Executive.

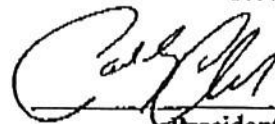
B-3

CITY OF NEWARK

- o ORDINANCE 84-19
- o ATTORNEY'S STATEMENT

Thomas G. Hughes, Esquire

Approved on: 12/29/04


County ExecutiveAdopted by County Council of
New Castle County on:
President of County Council
New Castle County

SYNOPSIS: This Ordinance adopts the revised local limits for the City of Wilmington's Wastewater Treatment Plant and the Middletown-Odessa-Townsend Wastewater Treatment Plant ("MOT Plant"), as required by the EPA. In addition, the Ordinance adopts the provisions to implement the fats, oil and grease ("FOG") program in compliance with DNREC's Secretary's Order. This Ordinance also incorporates revisions suggested or required by the EPA and incorporates revisions reflecting the current practices within the Department of Special Services. The Substitute Ordinance modifies the title of the Ordinance by adding Article 3. In addition, the Substitute Ordinance addresses grammatical and formatting issues throughout the Ordinance.

FISCAL NOTE: See attached.

FISCAL NOTE:

This Ordinance requires the collection of a fee for the FOG program in the amount of one hundred dollars (\$100.00) per commercial food establishment. The commercial food establishments participating in this program is estimated to be over one thousand. Estimated revenue of \$100,000.00 may be generated.

Ronald G. Thomas
owner

RECEIVED

JAN 10 2005

New Lasie County
Department of Special Services